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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/010,934	11/13/2001	Ann M. Nichols	KCC 4729.1 (16,210.1)	8461
321	7590	01/10/2005	EXAMINER	
SENNIGER POWERS LEAVITT AND ROEDEL ONE METROPOLITAN SQUARE 16TH FLOOR ST LOUIS, MO 63102			FOSTER, JIMMY G	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 01/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No. 10/010,934	Applicant(s) NICHOLS ET AL.	
Examiner Jimmy G Foster	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-13, 15, 17-19, 21 and 23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-13, 15, 17-19, 21 and 23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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1) The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2) Claims 2-11, 13, 15, 17, 19 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Joseph et al (6,015,045) in view of McLaughlin et al (4,997,613) and published Canadian patent document 2,109,782 to Larose et al. The reference of Joseph et al discloses a package for feminine care articles (col. 3, lines 5-6 and lines 42-43), including sanitary napkins (which function as panty liners). The package includes a pocket (Fig. 1) made of flexible material (col. 3, line 65 through col. 4, line 4), having a hollow interior (again Fig. 1) which contains the articles.

The pocket includes a back portion which is the portion of the pocket opposite to the wall 12. Another portion that *in part* forms the pocket is the retaining band 44, which may be considered to define the middle portion of the pocket since it will be located between the back part and the flap in the closed package. Inasmuch as Applicant's claim 19 calls for the back portion and the middle portion to at least *in part* form the pocket, Applicant's claimed back and middle portions do not distinguish over the subject matter of Joseph et al.

The pocket of Joseph et al includes an opening/aperture 14 extending into the hollow interior, permitting withdrawal of the articles (co. 3, lines 35-37) from the pocket. The opening 14 is closed by a flap/cover flap 30.

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The flap includes a open position (Fig. 1) in which the opening 14 is unobstructed by the flap. The flap also includes a closed position (col. 4, lines 62-65) in which the flap covers the opening, which would prevent article removal, as inherent from the size and shape of the flap 30 in comparison to the opening 14 in Figure 1.

A reclosable/refastenable adhesive closure 50 is provided on the flap (the entire width thereof) for releasably fastening the flap in the closed position (col. 7, lines 50-52 and lines 55-58) over the exterior of the retaining band/middle portion 44. The adhesive may be applied/positioned on the flap 30 or the retaining band 44 (col. 8, lines 7-8). The adhesive extends the entire width of the flap, as indicated in Figure 7. Moreover, the adhesive is inherently spaced from the distal edge of the flap since the flap includes a finger tab 34 which forms a distal edge of the flap (see Fig. 1) and since the tab does not receive the refastenable adhesive (see Fig. 7).

Regarding Applicant's limitation calling for the pocket to be of unitary construction, the limitation is not considered to distinguish over the pocket of Joseph et al since the term "unitary" is broad enough to be defined as "of or pertaining to a unit or units" or "having the character of a unit" (Webster's II New Riverside University Dictionary, 1984). Moreover, even if "unitary construction" were to be interpreted as requiring the pocket as being made from a single piece, it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893); See also *In re Heinrich*, 268 F.2d 753, 756, 122 USPQ 388, 390 (CCPA 1959). Moreover, the reference of McLaughlin et al, which Joseph et al incorporates by reference (col. 5, lines 58-64), suggests that the middle portion and back portion of Joseph et al may be made from a single

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sheet 24,26 which also includes the flap (see col. 5, line 55 through col. 6, line 4), which would apparently allow a simpler manipulation of the single piece, as opposed to multiple pieces, in the manufacture of the package. Accordingly for these reasons, it would have been obvious in view to have made the pocket of Joseph et al from one piece, including the middle portion/retaining band 44.

Regarding Applicant's limitation calling for the flap to be releasably securable by the adhesive to anywhere on the exterior area of the middle portion, this is not considered to distinguish over the subject matter of Joseph et al since any portion of the exterior surface area of the middle portion/retaining band 44 is capable of being secured by the adhesive 50 which is on the flap. This is especially the case because the package of Joseph et al is amorphous/flexible and may be flexed to permit this, and therefore the flap 30 which includes the adhesive 50 may therefore be extended over any part of the retaining band/middle portion 44 so that the adhesive 50 will contact that part.

Although it is not explicitly evident from the Joseph et al patent that the package/pocket will be substantially filled with the feminine articles so as to conform to a stack of the articles, the reference of Larose et al, at Figure 1, the superior/upper pocket 30 thereof and the feminine care articles therein, that the pocket is shown to conform to a stack of articles therein, which substantially fill the pocket. It is apparent that filling the pocket would function to efficiently use the volume of the pocket, as evident in Figure 1. Accordingly, it would have been obvious in view of Larose et al to have filled the pocket of Joseph et al with a stack of the feminine articles for the purpose of efficiently using the volume of the pocket for storage of the articles.

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The reference of Larose et al also apparently suggests that packaged feminine care articles may be individually wrapped, see Figure 1 (also see the second text page of the specification, heading "BUT DE L'INVENTION"). Furthermore, beyond the patent of Larose, official notice is taken that it is very well known to individually package feminine care products in an outer package for known advantages, such as individual protection of the articles, and providing of a wrapper that may be used to wrap each product after it is used, for disposal. For these reasons, it would have further been obvious, in view of Larose or in view of it being well known, to have individually wrapped the feminine articles of Joseph et al that are stored in the package.

Regarding Applicant's claim 4, the package may be shaped as disclosed by the patent to McLaughlin et al (4,997,613, incorporated by reference in the Joseph et al patent). See the column 5, lines 58-61. The flap of that incorporated reference is substantially rectangular. Accordingly, it would have been obvious in view of this to have made the package of Joseph and the flap thereof with the shape of McLaughlin et al, including wherein the flap is rectangular. Moreover, McLaughlin et al, as with Joseph et al, suggests that the adhesive element (16) on the flap may be oriented parallel with the edge of the flap. It therefore would have been further obvious to have maintained this relationship between adhesive and the flap edge of Joseph et al when the edge is made straight in the manner of McLaughlin et al. Additionally, the reference of Larose suggests that the fastener spaced from on a flap edge may be spaced from a straight edge of the flap. Accordingly, it would further have been obvious in view of Larose to have maintained the adhesive of Joseph et al at a location which is spaced from the flap edge.

Regarding claims 2 and 3, to have spaced the adhesive from the distal edge by a particular distance would have been further obvious as discovering

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a workable range when the general condition is taught in the art (by Joseph et al). See In re Aller, 105 USPQ 233.

Regarding claims 5-7, to have made the adhesive of Joseph et al, as modified above, with a particular width would have been further obvious as discovering a workable range when the general condition is taught in the art since Joseph et al teaches an adhesive strip, which would necessarily have a width.

Regarding claim 11 which calls for a two-sided tape, the reference of McLaughlin et al at 14,16,54 and column 7, lines 49-55 suggests that the closure may include a double-sided/two sided adhesive tape, for attachment of the closure to a container flap. Accordingly, it would have further been obvious in view of McLaughlin et al to have included a two-sided tape as the adhesive closure of Joseph et al for attachment of the adhesive material to the flap thereof.

1. Claim 12 is rejected under 35 U.S.C. 103 as being unpatentable over Joseph et al (6,015,045) in view of McLaughlin et al (4,997,613) and published Canadian patent document 2,109,782 to Larose et al as applied to claim 19 above, and further in view of official notice that refastenable hot melt adhesive and its properties are well known. Resealable hot melt adhesives and their properties are known; Applicant admits to their conventionality (see page 8). Selection of a known material based upon its suitability for the intended use thereof generally will not support patentability. In re Leshin, 125 USPQ 416. Accordingly, selection of a particular known material, such as hot melt adhesive, as the adhesive 50 of Joseph et al for the suitability thereof would have further been obvious.

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2. Claims 17 and 18 are rejected under 35 U.S.C. 103 as being unpatentable over Joseph et al (6,015,045) in view of McLaughlin et al (4,997,613) and published Canadian patent document 2,109,782 to Larose et al as applied to claim 19 above, and further in view of official notice that panty liners and inter-labial pads are known forms of feminine care products having known use. It would have been obvious to have used the package of Joseph et al, as modified above, for storing and carrying any known hygienic/feminine care articles, including the known ones claimed by Applicant (panty liners and inter-labial pads) for providing the same containing and dispensing features for such products that Joseph et al provide for the feminine care articles disclosed.

3) Claims 2-10, 13, 15, 17, 19, 21 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones (3,557,853) in view of Larose et al (Canadian 2,109,782), Joseph et al (6,015,045) and Tundermann (3,735,918). In the reference of Jones there is provided a package at holder 10, including a flexible pocket 12a,12b,14,16,18, a top opening into the interior 20 of the pocket, a rectangular flap 22 for reclosably closing the opening, and a reclosable, re-openable fastener/closure 24,25 which extends parallel to said edge. The opening of the flap allows insertion and removal of the contents of the pocket. Closing of the flap prevents insertion and removal of the contents of the pocket.

The contents are feminine care articles, such as sanitary napkins. The holder may hold more than one article (col. 1, lines 19-21). The contents are shown filling the pocket.

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The distal edge of the flap is straight and the fastener strip is parallel to the distal edge.

Regarding Applicant's limitation calling for a back portion and a middle portion, which *in part* form the pocket such that the flap is securable by the adhesive to substantially anywhere on the middle portion, the area of the panel portions 12a, 12b of Jones which is underneath the closure fastener 25 may be considered to constitute a middle portion insofar as claimed. Although the reference of Jones discloses that the flap fastener constitutes complementary interengageable strips sold under the trade name "Velcro," the reference of Joseph et al, at column 7, line 55 through column 8, line 6, suggests that interengageable fasteners (i.e. hook-and-loop material fasteners) and refastenable adhesive (e.g. pressure sensitive adhesive) are equivalents in the art for performing the function of reclosably fastening a flap closed on a flexible pocket for sanitary articles. These equivalents fasteners use similar actions to be fastened and unfastened. For unfastening them, one would use a separating force. For fastening them, one would use a pressing force. The taught adhesive (50) is shown in Figure 7, and does not include complementary portions. Additionally, regarding Applicant's limitation (claims 23) calling for the flap to be not in alignment with the uncovered second portion of a first wall of the pocket and regarding the limitation (claims 19 and 21) calling for the flap to be releasably securable by the adhesive to anywhere on the exterior area of the middle portion, the reference of Tundermann suggests 1) that the reclosable adhesive on the flap of a bag which may be secured to a middle portion (22) of pocket in a manner wherein the uncovered portion is not in alignment with the flap, and 2) that such a feature will permit the securement of the flap at unlimitedly various sealing positions (col. 1, lines 29-32). Accordingly it would have been

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obvious, in view of these teachings to have substituted a reclosable adhesive material for the hook-and-loop fastener assembly 24,25 of Jones.

Additionally, it is notoriously well known as an every day use of flexible packaging, in which a portion of the contents are removed and a portion of the contents remain in the package, for the user to close the package tighter on the remaining contents. To have done this with the package of Jones (as modified) when one of the two sanitary napkins has been removed from the package would have further been obvious.

Additionally, the reference of Joseph et al at 50 suggests making an adhesive fastener over substantially the entire width of a closure flap (30). This apparently provides for a full sealing of the opening of the package. Accordingly, it would have further been obvious in view of Joseph et al to have made the adhesive fastener as applied to Jones with a length cover in the entire width of the flap for sealing the entire opening.

Although the reference of Jones does not disclose individually wrapped sanitary napkins/feminine care articles, the reference of Larose et al suggests that packaged feminine care articles may be individually wrapped and provided in a stack, see Figure 1 and also see the second text page of the specification under the heading "BUT DE L'INVENTION." Furthermore, beyond the patent of Larose, official notice is taken that it is very well known to individually package feminine care products in an outer package for the known advantages, such as individual protection of the articles, and providing a wrapper that may be used to wrap the product after it is used, for disposal. For these reasons, it would have further been obvious, in view of Larose or in view of it being well known, to have individually wrapped the feminine articles/sanitary napkins of Jones that are stored in the package.

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Also the reference of Larose et al, at Figure 1, at the superior/upper pocket 30 thereof, and at the feminine care articles in the pocket, suggests that the pocket of an feminine care article holder may be filled with a stack of the articles in a manner such that the pocket will conform to a stack of articles therein. It is apparent that filling the pocket would function to efficiently use the volume of the pocket, as evident in Figure 1.

Accordingly, it would have further been obvious in view of Larose et al to have filled the pocket of Jones et al with a stack of the individually packaged feminine articles for the purpose of efficiently using the volume of the pocket for storage of the articles.

Regarding claims 2, 3 and 5-7, to have spaced the adhesive from the distal edge by a particular distance or to have provided the strip of adhesive with a particular width would have been further obvious as discovering a workable range when the general condition is taught in the art (by Joseph et al). See In re Aller, 105 USPQ 233.

4). Claims 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jones (3,557,853) in view of Larose et al (Canadian 2,109,782), Joseph et al (6,015,045) and Tundermann (3,735,918) as applied to claim 19 above, and further in view of McLaughlin et al (4,979,613). Regarding claim 11 which calls for a two-sided tape, the reference of McLaughlin et al at 14,16,54 and column 7, lines 49-55 suggests that the closure may include a double-sided/two sided adhesive tape, for attachment of the closure to a container flap. Accordingly, it would have further been obvious in view of McLaughlin et al to have included a two-sided tape as the adhesive closure of Jones (as modified above) for attachment of the adhesive material to the flap thereof.

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5) Claims 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jones (3,557,853) in view of Larose et al (Canadian 2,109,782), Joseph et al (6,015,045) and Tundermann (3,735,918) as applied to claim 19 above, and further in view of official notice that refastenable hot melt adhesive and its properties are well known. Resealable hot melt adhesives and their properties are known; Applicant admits their conventionality (see page 8). Selection of a known material based upon its suitability for the intended use thereof generally will not support patentability. In re Leshin, 125 USPQ 416. Accordingly, selection of a particular known material, such as hot melt adhesive, as the adhesive of Jones (as modified above) for the suitability thereof would have further been obvious.

3. Claims 17 and 18 are rejected under 35 U.S.C. 103 as being unpatentable over Jones (3,557,853) in view of Larose et al (Canadian 2,109,782), Joseph et al (6,015,045) and Tundermann (3,735,918) and further in view of as applied to claim 19 above, and further in view of official notice that panty liners and inter-labial pads are known forms of feminine care products having known use. It would have been obvious to have used the package of Jones, as modified above, for storing and carrying any known hygienic/feminine care articles, including the known ones claimed by Applicant (panty liners and inter-labial pads) for providing the same containing and dispensing features for such products that Jones provide for the feminine care articles disclosed.

6) Applicant's arguments with respect to the rejected claims have been considered but are moot in view of the new ground(s) of rejection.

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Applicant's claims call for middle and back portions of the pocket, in which the portions are only required to at least in part form the pocket.

Therefore, the pocket may include other portions. Moreover, the term "portion" does not requires any particular form for the structure; any miniscule part is capable of being named a portion. Accordingly, the middle portion of the pocket of Joseph et al may be the retaining band 44. The middle portion in Jones may be the portion of the panels 12a,12b underneath the hook-and-loop suggests that strip 25. Therefore, the limitation of Applicant, regarding the flap being securable by the adhesive closure substantially anywhere on the exterior of the area of the middle portion, does not substantially distinguish over the base reference of Jones or the base reference of Joseph et al.

Moreover, Applicant is not the first to decide to employ reclosable adhesive on the flap of a bag so as to provide unlimited sealing positions of the flap. This is exactly what the reference of Tundermann (used for the first time) teaches. Additionally, it is notoriously well known as an every day use of flexible packaging, in which a portion of the contents are removed and a portion of the contents remain in the package, for the user to close the package tighter on the remaining contents.

7) Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jimmy G Foster whose telephone number is (571) 272-4554. The examiner can normally be reached on Mon-Fri, 8:45 am - 5:15 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax

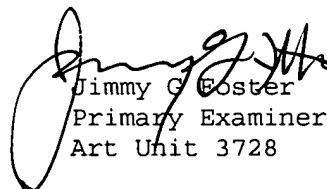
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phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.


Jimmy C. Foster
Primary Examiner
Art Unit 3728

JGF
5 January 2005